

SERVICE DATE – LATE RELEASE JANUARY 5, 2006

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 29963

BAY COLONY RAILROAD CORPORATION–
MODIFIED RAIL CERTIFICATE

STB Finance Docket No. 34698

BAY COLONY RAILROAD CORPORATION–
PETITION FOR DECLARATORY ORDER

Decided: January 5, 2006

On April 13, 2005, the Massachusetts Bay Transportation Authority (MBTA) filed a Notice of Termination of Operating Authority of the Bay Colony Railroad Corporation (Bay Colony). Bay Colony has been operating the 3.4-mile Millis Industrial Track between Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4) in Norfolk County, MA, under a modified certificate of public convenience and necessity that was issued on September 24, 1987, pursuant to 49 CFR 1150.23. Bay Colony has been operating the line under a lease and operating agreement with MBTA, the owner of the line.

On May 2, 2005, Bay Colony filed a petition in Finance Docket No. 29963 to dismiss MBTA's notice. Bay Colony concurrently filed a petition for declaratory order in STB Finance Docket No. 34698, asking the Board to determine that: (1) MBTA's notice is invalid and ineffective to terminate its authority to operate the line; (2) Bay Colony has a regular certificate of public convenience and necessity, not a modified certificate, to operate the line; (3) MBTA can terminate Bay Colony's operating rights only by an adverse abandonment proceeding; and (4) Bay Colony is the successor in interest to, and the current holder of, an easement affording Bay Colony the right to provide freight service on the line.

A decision served on May 25, 2005, granted MBTA an extension until May 31, 2005, to file its responses to Bay Colony's petition to dismiss. Decisions served on June 1, July 11, September 7, and November 4, 2005, granted requests by the parties to hold the proceedings in abeyance to enable them to explore settlement of the issues raised in Bay Colony's petition. The most recent decision directed the parties to report on the status of their negotiations by January 3, 2006.

On January 3, 2006, MBTA and Bay Colony reported that an assignment of easement rights with respect to freight service on the Millis Industrial Track has been executed, delivered to Bay Colony, and put on record. As a result, MBTA has filed a request to dismiss with prejudice its notice of termination of Bay Colony's operating authority filed in Finance Docket No. 29963. The parties report further that they have not as yet finalized a trackage rights agreement governing Bay Colony's operation over the Millis Industrial Track. They state that negotiations have been delayed by the retirement of an MBTA official who was responsible for the trackage rights agreement, but that his successor has familiarized himself with the relevant issues. They expect to complete negotiations in the near future and request that the Board continue to hold STB Finance Docket No. 34698 in abeyance. The parties indicate that, following the signing of the trackage rights agreement, they will seek to dismiss Bay Colony's petition for declaratory order and will file appropriate notices of exemption for Bay Colony's operation on the Millis Industrial Track

Good cause exists for granting: (1) MBTA's request to dismiss with prejudice its notice of termination of Bay Colony's operating authority in Finance Docket No. 29963; and (2) the parties' request to continue to hold the petition for declaratory order in STB Finance Docket No. 34698 in abeyance. The parties are directed to report on the status of their negotiations by March 6, 2006.

It is ordered:

1. MBTA's request to dismiss with prejudice its Notice of Termination of Operating Authority of Bay Colony filed in Finance Docket No. 29963 is granted.
2. MBTA and Bay Colony's request to continue to hold STB Finance Docket No. 34698 in abeyance is granted. The parties are directed to report on the status of their negotiations by March 6, 2006.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary